KETUA PENGARAH KASTAM & ANOR v. WINTERCORN MALAYSIA SDN BHD

COURT OF APPEAL, PUTRAJAYA
S NANTHA BALAN JCA
AZIMAH OMAR JCA
CHOO KAH SING JCA
[CIVIL APPEAL NO: W-01(A)-579-10-2021]
12 MARCH 2024

Abstract – *(i) It is a principle in statutory interpretation that if there exists a deliberate change in wordings between two related provisions under the same statutes, then there must be a corresponding or consequential change of meaning; (ii) When there is no ambiguity as to a particular provision, the court ought not to modify or qualify the provision beyond what is expressly prescribed within the provision; (iii) Specific to statutes as to tax exemptions, the tax exemption must strictly be construed in favour of taxation.*

REVENUE LAW: *Sales tax – Exemption – Company engaged in trading edible oil products – Company applied for exemption on purchase of packaging materials – Company granted certificates of exemption specific and limited to sale and purchase of edible oil products – Company not eligible for exemption concerning packaging material for purposes of trader's repackaging – Bill of demand issued to company – Whether company entitled to legitimate expectation that purchase of packaging materials, for trader's repackaging, was exempted – Whether company's exercise of trader's repackaging fell either within broad exemption under subject exemption or specific exemption and manufacturer's exemption – Whether customs' interpretation of subject exemption merely holistic and proper interpretation of all relevant laws or undue imposition of internal policies beyond ambit of subject exemption – Sales Tax Act 2018 – Sales Tax (Persons Exempted From Payment Of Tax) Order 2018*

ADMINISTRATIVE LAW: *Judicial review – Appeal – Appeal against decision of High Court – Applicant commenced judicial review against decision of customs authorities – Bill of demand issued to company – Whether company entitled to legitimate expectation that purchase of packaging materials, for trader's repackaging, was exempted – Whether company's exercise of trader's repackaging fell either within broad exemption under subject exemption or specific exemption and manufacturer's exemption – Whether customs' interpretation of subject exemption merely holistic and proper interpretation of all relevant laws or undue imposition of internal policies beyond ambit of subject exemption*

The respondent was a company principally engaged in trading edible oil products which were sold in the foreign market. In its course of business, the respondent sourced for edible palm oil and packaging materials from Malaysian manufacturers. The respondent had allegedly applied online for exemption on the purchase of the packaging material under item 57 of Schedule A to the Sales Tax (Persons Exempted From Payment Of Tax) Order 2018 ('Exemption Order'). In the said applications, the respondent did not declare any description or tariff code of the sale and purchase of the packaging materials and, therefore, the applications were only for exemption of the purchase of the edible oil products. Between September 2018 to April 2019, the respondent was granted 17 certificates of exemption ('impugned exemption certificates') by the appellants, specific and limited to the sale and purchase of edible oil products. In a meeting at the second appellant's office, the respondent was informed that it was not eligible for the exemption under the subject exemption concerning the packaging material for purposes of trader's repackaging. The first appellant issued a bill of demand in the sum of RM3,697,852 to the respondent under s. 38 of the Sales Tax Act 2018 ('STA'). Dissatisfied, the respondent applied for a judicial review to quash the decision of the appellants' decision in the form of the bill of demand. The High Court Judge ('HCJ') allowed the application. Hence, the present appeal. The issues that arose for adjudication were: (i) whether the respondent was entitled to the legitimate expectation that its purchase of packaging materials, for trader's repackaging, was exempted under the subject exemption; (ii) whether the appellants were correct in finding that the respondent's exercise of trader's repackaging did not fall either within the broad exemption under the subject exemption (item 57 of Schedule A) or even the specific exemption under item 53 of Schedule A and the manufacturer's exemption (item 4 of Schedule B); and (iii) whether the appellant's interpretation of the subject exemption was merely a holistic and proper interpretation of all relevant laws or an undue imposition of internal policies beyond the ambit of the subject exemption.

Held (allowing appeal)

Per Azimah Omar JCA delivering the judgment of the court:

(1) The HCJ had decided that the appellants had conducted themselves in a manner which led the respondent to believe and to legitimately expect that its purchase of packaging materials, for trader's repackaging, was exempted under the subject exemption. The HCJ based His Lordship's finding on the supposed 'changes and/or reversals in decision' that had led the respondent to believe that it was exempted under the subject exemption. There was a glaring error in the HCJ's appreciation of the true facts on this matter. In truth, there had never been any reversals or changes in decisions as to the tax treatment upon the trader's repackaging. The respondent had never raised any issue as to the tax treatment of the trader's repackaging for the entire period of time the 17

impugned exemption certificates were issued. The respondent's query on 6 September 2020, regarding the appropriate tax treatment was made only after the issuance of the impugned exemption certificates. Thus, the declaration and application for exemption during that material time must strictly be for the purchase of edible oil products, and not the packaging materials. Furthermore, the alleged oral confirmation by an unauthorised person could not be considered a valid decision to allow exemption under the subject exemption. It remained undisputed that the said unauthorised person was neither the Director General under STA nor was he the Minister under the Exemption Order. Therefore, the respondent was not entitled to the legitimate expectation that its purchase of packaging materials, for trader's repackaging, was exempted under the subject exemption. (paras 20, 21, 22, 24 & 31)

(2) All profits made are subjected to tax under the STA unless expressly exempted by the statute or orders published in gazettes. The burden is on the person seeking exemption to prove that he is entitled to the exemption. The provisions are clear. There was no reason to modify or qualify the subject exemption any further. The subject exemption ought not to be read *in vacuo* or in isolation of all other items of exemptions prescribed within the same Exemption Order. The exemption as to packaging materials were specifically governed under item 53 of Schedule A. The Exemption Order intended the two provisions to exist as separate provisions and to govern separate matters of exemption. It was clear that the subject exemption was a general provision to govern the exemptions applicable to traders undertaking exportation of locally manufactured goods. Furthermore, the packaging exemption (item 53 of Schedule A) was the specific and clear provision to govern the sale and purchase of locally manufactured packaging materials by traders. The HCJ should have adhered to the words of the Exemption Order in its plain and ordinary meaning. The appellants were correct in finding that the respondent's exercise of trader's repackaging did not fall within the broad exemption under the subject exemption (item 57 of Schedule A) or even the specific exemption under item 53 of Schedule A and the manufacturer's exemption (item 4 of Schedule B). (paras 32, 40, 41, 46, 50 & 53)

(3) The different tax treatments between a trader's packaging and a manufacturer's packaging was purely a matter of law and not mere internal policies. The different treatments were plain and obviously prescribed within the machinations of the Exemption Order itself, which was already well within the knowledge and reliance of the respondent itself. Therefore, the appellant's interpretation of the subject exemption was merely a holistic and proper interpretation of all relevant laws and was not any undue imposition of internal policies beyond the ambit of the subject exemption. (paras 54 & 65)

(4) The decision and order of the High Court were set aside. The appellants' stance and decision were reinstated. The respondent was ordered to pay to the appellants the sum of RM3,697,852.16 demanded by way of bill of demand with interests. (para 66)

Case(s) referred to:

Abdul Salam Husin v. Majlis Angkatan Tentera & Anor [2011] 2 CLJ 1 FC ***(refd)***

Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals [2020] 1 CLJ 162 FC ***(refd)***

Director Of Customs Federal Territory v. Ler Cheng Chye Liquidator of Castwell Sdn Bhd (In Liquidation) [1995] 3 CLJ 316 SC ***(refd)***

Exxon Chemical (Malaysia) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2005] 4 CLJ 810 CA ***(refd)***

Lau Keen Fai v. Lim Ban Kay & Anor [2012] 1 CLJ 569 FC ***(refd)***

Majlis Peguam & Anor v. Tan Sri Dato' Mohamed Yusoff Mohamed [1997] 3 CLJ 332 SC ***(refd)***

Mohd Najib Hj Abd Razak v. Government Of Malaysia & Another Appeal [2023] 10 CLJ 329 FC ***(refd)***

Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***

Premium Vegetable Oils Sdn Bhd v. Palm Oil Research And Development Board Malaysia & Anor [2002] 3 CLJ 818 CA ***(refd)***

Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan Bhd v. Majlis Perbandaran Pulau Pinang [1996] 3 CLJ 335 CA ***(refd)***

Syarikat Pendidikan Staffield Bhd v. Ketua Pengarah Hasil Dalam Negeri [2011] 5 CLJ 916 HC ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 53

Sales Tax (Persons Exempted From Payment Of Tax) Order 2018, para 5(4) Schedule A, item 5, 6.2, Schedule B item 1, 2, 3, 4, Schedule C item 1, 2, 3, 4

Sales Tax Act 2018, ss. 38, 43(1)

For the appellant - Rahazlan Affandi Abdul Rahim; SFC & Noor Atiqah Zainal Abidin; FC

For the respondent - S Saravana Kumar & Rishima Sudhakaran (Pupil in Chambers); M/s Rosli Dahlan Saravana Partnership

[Editor's note: For the High Court judgment, please see Wintercorn Malaysia Sdn Bhd v. Ketua Pengarah Kastam & Anor [2022] CLJU 2153; [2022] 1 LNS 2153 (overruled).]

Reported by Najib Tamby

JUDGMENT

Azimah Omar JCA:

Introduction

[1] The appeal before us is an appeal against the learned High Court Judge's ("learned judge") decision and order dated 6 August 2021 to allow the respondent's judicial review ("JR application") against the appellants'

decision deeming that the respondent's sale and purchase of packaging materials (as a trader and not manufacturer) for the purpose of subsequent repackaging of exempted goods (locally manufactured edible oil) for export was not within the exemption of item 57, Schedule A ("subject exemption") of the Sales Tax (Persons Exempted From Payment Of Tax) Order 2018 [PU (A) 210/2018] ("Exemption Order").

[2] Amidst the layers of legal arguments furnished, the bare contentions of the parties were simply the following:

(i) the appellants insisted on a plain and literal interpretation of the subject exemption (which clearly and purposely omitted and excluded the inclusion of packing or packaging materials). The appellants contended that the tax exemption upon sale and purchase of packing materials are only applicable to local manufacturers who conduct packaging of goods (in its own manufacturing process to produce exempted goods) ("manufacturer's packaging"). The exemption as to manufacturer's packaging was specifically governed by a specific and separate item in item 4, Schedule B ("manufacturer's exemption") of the Exemption Order;

(ii) the subsequent and second repackaging of the exempted goods ("trader's repackaging") should not be given the same tax treatment as manufacturer's repackaging as a manufacturer's packaging and a trader's repackaging are essentially separate and distinct in nature, and value;

(iii) the only exemption for the sale and purchase of packaging materials prescribed upon traders was only limited to the specific purpose of repackaging fresh eggs, fresh vegetables, fresh fruits, aquatic plants, aquarium marine life or cut flowers for the purpose of export (see item 53, Schedule A of the Exemption Order). Thus, even item 53's exemption does not cover the respondent's repackaging of locally manufactured edible oil;

(iv) thus, the specific provisions under the Exemption Order must take precedence over the general rule in the subject exemption;

(v) the respondent, on the other hand, contended that by operation of legitimate expectation, the word packaging materials should be read into the subject exemption, despite the overt and purposeful omission of the words within the subject exemption; and

(vi) the respondent also contended that the separate and distinct treatment between manufacturer's packaging and trader's repackaging are merely an internal policy of the appellants which ought not to be attached as additional requirements on top of the subject exemption (by 're-writing the law').

[3] Although at this preliminary juncture, we find that it is glaringly self-contradictory of the respondent to insist on the reading and inclusion of additional words into the subject exemption while at the same time challenging the appellants for allegedly reading additional requirements into the subject exemption. The respondent essentially complained of the same exact alleged transgression that the respondent itself was also attempting.

[4] For a proper appreciation of the contentions above, it is crucial that we first understand the facts underlying this case.

Facts Of The Case

[5] Wintercorn Malaysia Sdn Bhd ("respondent") is a trading company incorporated in Malaysia principally engaged in trading of edible oil products which are sold in the foreign market.

[6] In its course of business, the respondent sources for edible palm oil and packaging materials from Malaysian manufacturers. The respondent's trading *modus operandi* was simply as follows:

(i) the respondent does not manufacture the edible oil products. Instead, the respondent engages in repackaging and exporting of edible oil products;

(ii) a separate local manufacturer would undertake manufacturing and manufacturer's packaging of the edible oil products;

(iii) the respondent shall purchase edible oil products from the local manufacturer. Thereafter, the edible oil products (in the manufacturer's packaging) will be delivered to the appointed packer (a separate packaging company), who will undertake the subsequent trader's repackaging to repackage the edible oil products in jerrycan containers, PET bottles, tins and drums. The repackaged edible oil products then will be exported.

[7] The respondent allegedly applied online for exemption on the purchase of the packaging materials under item 57, Schedule A of the Exemption Order *via* the MySST portal. Although in reality, the online applications *via* Form K2 by the respondent did not declare any description or tariff code of the sale and purchase of the packaging materials. Thus, the online applications were only for the exemption of the purchase of the edible oil products.

[8] Thus, between 7 September 2018 to 5 April 2019, the respondent was granted 17 certificates of exemption ("impugned exemption certificates") by the Ketua Pengarah Kastam and the Jabatan Kastam Diraja Malaysia ("the appellants") specific and limited to the sale and purchase of edible oil products. Since the sale and purchase of the packaging materials (for trader's repackaging) were never declared, thus the impugned exemption certificates were not for the exemption on the sale and purchase of the packaging materials by the respondent.

[9] It must be kept strictly in mind that during the entire period of the issuances of the 17 impugned exemption certificates, the respondent never, at that material time, sought to clarify with the appellants regarding the tax treatment as to the trader's repackaging. Thus, contrary to the respondent's insistence, it is patently clear that the application and granting of the impugned exemption certificates were limited only to the sale and purchase of the edible oil products.

[10] Only on 6 September 2020 did the respondent had allegedly sought and obtained an oral confirmation by a customs officer, one Tuan Ahmad Tarmizi, at the appellants' office that the sale and purchase of packaging materials (for purposes of trader's repackaging) falls within the ambit of the subject exemption. The appellants denied ever having given any confirmation to the respondent. Nor did the respondent had any evidence to prove its supposition of an oral confirmation.

[11] It remains undisputed that Tuan Ahmad Tarmizi ("unauthorised person") was not the properly designated Minister or Director General to decide on exemptions under the Exemption Order. Nor was it disputed that the respondent had never endeavoured to properly seek confirmation from the Minister (under the Exemption Order) or the Director General (under s. 43(1) of the STA) as to the appropriate tax treatment as to a trader's repackaging exercise.

[12] On 15 October 2019, the respondent attended a meeting at the second appellant's office, during which, the respondent was informed that the respondent was not eligible for the exemption under the subject exemption concerning the packaging materials (for purposes of trader's repackaging). The second appellant, on 19 December 2019, issued a letter to the respondent informing the same.

[13] Subsequently, on 5 February 2020, the first appellant issued a bill of demand in the sum of RM3,697,852.16 to the respondent under s. 38 of the STA 2018 ("the bill of demand"). The reason for the issuance, as stated in the bill of demand, is reproduced below:

> 2. Tuntutan ini dikeluarkan atas sebab berikut:
>
> 2.1 Tidak layak menggunakan kemudahan pengecualian Cukai Jualan di bawah Seksyen 35 Akta Cukai Jualan 2018, Jadual A Butiran 57

[14] Dissatisfied, the respondent filed the JR application in the Kuala Lumpur High Court, which was allowed by the learned judge with costs.

Before The High Court

[15] At the High Court, the respondent filed the JR application *vide* encl. 27 under O. 53 of the Rules of Court 2012 seeking for reliefs, *inter alia*, to quash the appellants' decision in the form of the bill of demand dated 5 February 2020.

The Respondent's (Applicant At High Court) Case Before The High Court

[16] At the High Court, the respondent prayed for an order for *certiorari* on the following grounds:

(i) the appellants had arbitrarily rejected the respondent's application for exemption under item 57, Schedule A of the Exemption Order;

(ii) the appellants had relied on their internal policy to impose taxes against the policy decisions implemented by the Parliament;

(iii) the appellants had exceeded their powers by reading additional conditions into the Exemption Order; and

(iv) the appellants' decision violates the respondent's legitimate expectation that the respondent would follow the statutory provision in item 57, Schedule A of the Exemption Order.

The Appellants' (Respondents At High Court) Case

[17] At the High Court, the appellants submitted that the respondent was not entitled to the exemption for the following reasons:

(i) the appellants insisted on a plain and literal interpretation of the subject exemption (which clearly and purposely omitted and excluded the reference to, or the words "packing or packaging materials"). The appellants contended that tax exemption upon the sale and purchase of packing materials are only applicable to local manufacturers who conduct packaging of goods (in its own manufacturing process to produce exempted goods). The exemption as to manufacturer's packaging was specifically governed by a specific and separate item in item 4, Schedule B of the Exemption Order;

(ii) the subsequent and second trader's repackaging of the exempted goods should not be given the same tax treatment as the manufacturer's repackaging as a manufacturer's packaging and a trader's repackaging are essentially separate and distinct in nature, and value;

(iii) the only exemption for the sale and purchase of packaging materials afforded to traders was only limited to specific purpose of repackaging fresh eggs, fresh vegetables, fresh fruits, aquatic plants, aquarium marine life or cut flowers for the purpose of export (see item 53, Schedule A of the Exemption Order). Thus, even item 53's exemption does not cover the respondent's repackaging of locally manufactured edible oil;

(iv) there was never any legitimate expectation as the issuance of the 17 impugned exemption certificates were specifically limited to the exemption of the edible oils and not the undeclared packaging materials;

(v) the literal reading of the subject exemption was never any imposition of additional internal policy (as to value-added processing of exempted goods) but instead a matter of proper interpretation of the subject exemption alongside all relevant laws and statutes governing the distinct tax treatments between a manufacturer and a trader; and

(vi) thus, the specific provisions under the Exemption Order must take precedence over the general rule in the subject exemption.

[18] The learned judge allowed the respondent's JR application against the appellants on the following grounds:

(i) the learned judge found that it is not disputed by the appellants that the edible oil packed in the packaging materials was exported by the respondent. The packaging materials are necessary for the export and sale of the edible oil to the overseas market as the edible oil needs to be packed in a suitable and safe container for sale;

(ii) the respondent's business operation must be seen in totality and not in isolation. Without the packaging materials, the respondent will not be able to export and sell the edible oil;

(iii) the learned judge further found that the appellants had relied on their internal policy to impose additional conditions upon item 57, Schedule A of the Exemption Order and consequently, rejected the respondent's application;

(iv) relying on the Court of Appeal case of *Exxon Chemical (Malaysia) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2005] 4 CLJ 810; [2005] 2 MLRA 335; [2006] 1 MLJ 428, the learned judge held that the Malaysian jurisprudence is clear that the provisions of item 57, Schedule A of the Exemption Order must be construed in favour of the respondent and read liberally;

(v) it was also the learned judge's finding that the appellants are essentially usurping the role of the Parliament and rewriting the statute by imposing additional conditions; and

(vi) the learned judge further stated that the appellants' unilateral imposition of additional conditions to item 57, Schedule A of the Exemption Order constitutes a denial of the respondent's legitimate expectations.

The Appeal Before Us

[19] Upon perusing the appellant's memorandum of appeal, the learned judge's grounds of judgment, and the respective parties' written submissions, we are of the view that the propriety of the present appeal can be determined by answering the following issues:

(i) issue 1: whether the respondent was entitled to the legitimate expectation that its purchase of packaging materials (for trader's repackaging) was exempted under the subject exemption;

(ii) issue 2: whether the appellants were correct in finding that the respondent's exercise of trader's repackaging does not fall either within the broad exemption under the subject exemption (Item 57, Schedule a) or even the specific exemption under item 53, Schedule a, and the manufacturer's exemption (item 4, Schedule b); and

(iii) issue 3: whether the appellants' interpretation of the subject exemption was merely a holistic and proper interpretation of all relevant laws or an undue imposition of internal policies beyond the ambit of the subject exemption.

Issue 1: Whether The Respondent Was Entitled To The Legitimate Expectation That Its Purchase Of Packaging Materials (For Trader's Repackaging) Was Exempted Under The Subject Exemption

[20] Apart from the proper interpretation of the subject exemption, at the forefront of the respondent's argument was its contention on legitimate expectation. The learned judge had in fact decided that the appellants have conducted themselves in a manner which leads the respondent to believe and to legitimately expect that its purchase of packaging materials (for trader's repackaging) was exempted under the subject exemption. The learned judge based his finding on the supposed "changes and/or reversals in decisions" that had led the respondent to believe that it was exempted under the subject exemption.

[21] We do not hesitate to find the glaring error in the learned judge's appreciation of the true facts in this matter. In truth, there had never been any reversals or changes in decisions as to the tax treatment upon the trader's repackaging.

[22] Again, it must be reminded that the respondent had never raised any issue as to the tax treatment of the trader's repackaging for the entire period of time the 17 impugned exemption certificates were issued. The respondent's query on 6 September 2020 regarding the appropriate tax treatment was made only after the issuance of the impugned exemption certificates. Thus, the declaration and application for exemption during that material time must strictly be for the purchase of edible oil products (and not the packaging materials).

[23] Therefore, the issuance of the impugned exemption certificates was never a 'prior' or 'initial' decision to exempt the purchase of packaging materials (for trader's repackaging).

[24] On a similar note, the alleged oral confirmation by the unauthorised person on 6 September 2020 cannot be considered a valid decision to allow the exemption under the subject exemption. It remains undisputed that Tuan Ahmad Tarmizi was neither the Director General under the Sales Tax Act 2018 nor was the Minister under the Exemption Order. In doubt and in uncertainty, the statutorily authorised person to decide on the appropriate tax treatment under the Exemption Order shall only be the Minister. This statutory rule had long been prescribed under the para. 5(4) of the Exemption Order itself, which reads as follows:

> **Other conditions**
>
> 5(4) If any question arises as to **whether any particular goods are or are not included in the class of goods subject to exemption,** such question **shall be decided by the Minister.** (emphasis added)

[25] A parallel can be drawn to the recent Federal Court decision in *Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals* [2020] 1 CLJ 162; [2020] 1 MLJ 281. In that case, the Federal Court held that a Minister's statutory authority or discretion cannot be simply delegated when the statute itself does not explicitly allow for such delegation. Although in *Ang Ming Lee* the Federal Court dealt with the statutory discretion vested upon the Minister, the principal should *mutatis mutandis* apply upon the Minister's discretion vested under para. 5(4) of the Exemption Order.

[26] The respondent was not only aware of but was also vehemently relying on the Exemption Order. Thus, the respondent ought to have also known of the Minister's sole discretion under the same Exemption Order. Prudence would have it that the respondent should have taken the initiative to appropriately obtain proper confirmation from the Minister. But this was exactly what the respondent failed or refused to do.

[27] Therefore, it was not legally justifiable for the respondent to rely upon the unauthorised person's verbal confirmation. Consequentially then, it cannot be at all be said that the appellants had initially confirmed the respondent's eligibility to the subject exemption.

[28] Thus, the learned judge's appreciation of alleged reversals or changes in decision by the appellants were clearly a gross misapprehension of both law and facts. The learned judge had factored into improper and incorrect facts and had erroneously read the law.

[29] The circumstances which raise a legitimate expectation have been explained in the case of *Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan Bhd v. Majlis Perbandaran Pulau Pinang* [1996] 3 CLJ 335 at pp. 379 to 381:

A The phrase "legitimate expectation" may be used in various distinct senses. It may be used to denote a *substantive right which is established when there is a clear representation by the administrator or public body which could be reasonably relied upon by the claimant.*

Employed in this sense, the doctrine is akin to an estoppel.

B *Secondly,* legitimate expectation arises not because the claimant asserts any specific right to a benefit but rather because *his interest in it is one that the law holds protected by the requirements of procedural fairness.*

In this sense, the law recognises that the interest cannot properly be withdrawn or denied without the claimant being given an opportunity to C comment and without the authority communicating rational grounds for any adverse decision.

Thirdly, the concept of legitimate expectation may be used to refer to the *fair procedure itself.* In other words, it is contended that the claimant has a *legitimate expectation that the public body will act fairly towards him.*

D *The final category* of legitimate expectation encompasses those cases in which it is held that a particular procedure, not otherwise *required by law in the protection of an interest,* must be followed consequent upon some specific promise or practice. (emphasis added)

[30] However, it was obvious that the present case does not fall within any E of the above categories to justify any legitimate expectation to be afforded to the respondent. Neither did the appellants have acted in any manner that would fairly lead the respondent to believe that the subject exemption applies to the trader's repackaging. Nor does the law ever indicated that the purchase of packaging materials (for trader's repackaging) should be read into the F subject exemption.

[31] All the above in this part considered, we hereby answer issue 1 in the negative. The respondent was not entitled to the legitimate expectation that its purchase of packaging materials (for trader's repackaging) was exempted under the subject exemption.

G **Issue 2: Whether The Appellants Were Correct In Finding That The Respondent's Exercise Of Trader's Repackaging Does Not Fall Either Within The Broad Exemption Under The Subject Exemption (Item 57, Schedule A) Or Even The Specific Exemption Under Item 53, Schedule A, And The Manufacturer's Exemption (Item 4, Schedule B)**

H **[32]** The general rule is that all profits made are subjected to tax under STA 2018, unless expressly exempted by the statute or orders published in *Gazettes*. The burden is on the person seeking exemption to prove that he is entitled to the exemption.

I

[33] It is trite that taxation law must be interpreted strictly, especially where the provisions of the tax statute were clear and unambiguous. (See *Premium Vegetable Oils Sdn Bhd v. Palm Oil Research And Development Board Malaysia & Anor* [2002] 3 CLJ 818; [2002] 4 MLJ 552).

[34] In the landmark case of *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265; [2005] 3 MLJ 97 the late Gopal Sri Ram JCA (as he then was) held as follows:

> The correct approach to be adopted by a court when interpreting a taxing statute is that set out in the advice of the Privy Council delivered by Lord Donovan in *Mangin v. Inland Revenue Commissioner*.
>
> First, the *words are to be given their ordinary meaning.* They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices. As Turner J said in his (*albeit* dissenting) judgment in *Marx v. Inland Revenue Commissioner*[19] at 208, moral precepts are not applicable to the interpretation of revenue statutes.
>
> Secondly, '*... one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption so to a tax. Nothing is to be read in, nothing is to be implied.* One can only look fairly at the language used' per Rowlatt J in *Cape Brandy Syndicate v. Inland Revenue Commisioner*[20] at 71, approved by Viscount Simons LC in *Canadian Eagle Oil Co Ltd v. Regime*.[21]
>
> Thirdly, *the object of the construction of a statute being to ascertain the will of the Legislature,* it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.
>
> Fourthly, the *history of an enactment and the reasons which led to its being passed may be used as an aid to its construction.* (emphasis added)

[35] In the same spirit of strict interpretation, specific to statutes as to tax exemptions, the tax exemption "must strictly be construed in favour of taxation". Neither does the court should encroach against the Executive's prescription of the law to "create exemption from taxation by judicial construction". And the heavy burden to prove that a profit should fall within the ambit of an exemption lies solely upon the party claiming for the exemption (see *Syarikat Pendidikan Staffield Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2011] 5 CLJ 916).

[36] The subject exemption (item 57, Schedule A of the Exemption Order) provides as follows:

(1) Item No.	(2) Persons	(3) Goods Exempted	(4) Conditions	(5) Certificate to be signed by
57.	*Any person* approved by the Director General	*All locally manufactured goods for export*	(a) That the goods are *purchased from a registered manufacturer;* (b) that the goods be *exported within 6 months from the date of purchase;* (c) that the goods shall not be sold or otherwise disposed of in Malaysia except as sanctioned by the Director General and upon payment of the appropriate tax; (d) that the person approved shall pay all the taxes on any goods that cannot be accounted for; (e) that if the goods are not exported within six (6) months from the date of purchase the person approved shall be liable to pay all the taxes on the goods not exported.	The person approved by the Director General

(emphasis added)

[37] The appellants astutely highlighted that the specific provision governing tax exemption for a trader's purchase of packing and packaging materials involving locally manufactured goods for export is item 53, Schedule A of the Exemption Order. The specific provision reads as follows:

(1) Item No.	(2) Persons	(3) Goods Exempted	(4) Conditions	(5) Certificate to be signed by
53.	Any person approved by the Director General	**Packing and packaging materials**	(a) That the goods are imported or purchased from a licensed manufacturer; (b) that the goods are used solely for the packing or packaging of fresh eggs, fresh vegetables, fresh fruits, aquatic plants, aquarium marine life or cut flowers and then exported; (c) that the goods shall not be sold or otherwise disposed of in Malaysia; (d) that the person shall pay all the taxes on the goods that cannot be accounted for.	The person approved by the Director General

(emphasis added)

[38] Apart from items 57 and 53, Schedule A of the Exemption Order, the application for exemption for packing or packaging materials, could also be made under the manufacturer's exemption (item 4, Schedule B of the Exemption Order):

(1) Item No.	(2) Persons	(3) Goods Exempted	(4) Conditions	(5) Certificate to be signed by
4.	Any **manufacturer** approved by the Director General	Taxable raw materials and components **(including packing materials)** excluding petroleum solely for use in the manufacture of exempted goods for export	(a) that the raw materials and components are imported or purchased from a registered manufacturer; (b) that the raw materials and components are used and the goods produced thereof are exported within twelve months from the date of import or purchase or such further period as approved by the Director General; (c) that the raw materials and components and the goods produced thereof shall not be sold or otherwise disposed of in the Malaysia except as sanctioned by the Director General and upon payment of the appropriate amount of tax; (d) that the raw materials and components shall be used solely for the manufacture of exempted goods for export;	The person approved by the Director General

			(e) that the person approved shall pay the sales tax on any raw materials and components that cannot be accounted for; (f) that if the raw materials and components are not used and the goods produced thereof are not exported within twelve months from the date of import or purchase or such other period as approved by the Director General, the person approved shall be liable to pay the sales tax on the raw materials and components purchased or imported.	

(emphasis added)

[39] Furthermore, item 62 of Schedule A, items 1,2, 3, and 4 of Schedule B, and items 1, 2, 3, and 4 of Schedule C all also expressly and explicitly mentioned and included references as to packing and packaging materials.

[40] The provisions are clear. There is no reason for us to modify or qualify the subject exemption any further. When there is no ambiguity as to the provision, the court ought not to modify or qualify the provision beyond what was expressly prescribed within the provision. (See Federal Court's decision in *Abdul Salam Husin v. Majlis Angkatan Tentera & Anor* [2011] 2 CLJ 1; [2011] 2 MLJ 573:

> I wish to reiterate that it **is the court's duty to give effect** to the provisions of the Constitution and statutory law **without attempting to modify and qualify it, particularly when there is no ambiguity.** (emphasis added)

[41] It is clear that the subject exemption ought not to be read *in vacuo* or in isolation of all other items of exemptions prescribed within the same Exemption Order. The Federal Court had always upheld this principle of statutory interpretation. This principle was upheld in the Federal Court's most recent decision in *Mohd Najib Hj Abd Razak v. Government Of Malaysia & Another Appeal* [2023] 10 CLJ 329; [2023] 6 MLJ 483:

> Following on from the legal reasoning above, it follows that the evaluation of the constitutional validity of s. 106(3) of the ITA necessitates an understanding of the rationale behind the enactment of the ITA. This in turn means that the effect of s. 106(3) of the ITA within the **statute has to be studied AS A WHOLE, as opposed to a construction of the section *in vacuo*.** (emphasis added)

[42] Furthermore, the manufacturer's exemption (in item 4, Schedule B), item 62 of Schedule A, Items 1, 2, 3, and 4 of Schedule B, and items 1, 2, 3, and 4 of Schedule C are all relevant not because it applies to exempt the respondent. Instead, these other provisions were all relevant to properly appreciate and identify the true language and context of the Exemption Order.

[43] The language of the subject exemption was neither of absence or silence. Instead, it was of purposeful omission or intended exclusion. This was not a case of ambiguity or *lacunae* in law. The reason that the subject exemption did not expressly or impliedly include the purchase of packaging materials was not because it was silent about the matter. But instead, it was because the provision had purposely intended to exclude and omit the exemption on packaging materials for traders who undertake a trader's repackaging as part of their exportation's *modus operandi* (subject to the limited exceptions in item 53, Schedule A of the Exemption Order which does not include edible oil products).

[44] It is also a principle in statutory interpretation that if there exists a deliberate change in wordings between two related provisions under the same statute, then there must be a corresponding or consequential change of meaning. Suffice that we refer to the Federal Court decision in *Majlis Peguam & Anor v. Tan Sri Dato' Mohamed Yusoff Mohamed* [1997] 3 CLJ 332; [1997] 2 MLJ 271:

> On the strict rule of interpretation, it is very clear and plain, especially *by comparing s. 15(5) with the preceding s. 15(3) and the subsequent s. 16(1) that the legislature has deliberately left out the words 'or such shorter period as the court may allow'* from s. 15(5), indicating an obvious fact that the *legislature intended the three-month period to be mandatory*
>
> ...

> I consider that in a situation such as this, *the presumption that a deliberate change of wording denotes a change in meaning, can properly be invoked* (see *Ricket v. Metropolitan Ry Co* (1867) LR 2 HL 175, per Lord Westbury at p 207). (emphasis added)

[45] Thus, the respondent's assertion that the subject exemption was 'silent' on the inclusion or exclusion of packaging materials (and thus ought to be inferred to include packaging materials) was sorely ill-conceived. The Exemption Order was not at all silent.

[46] It is clear that the exemption as to packaging materials were specifically governed under item 53 of Schedule A. The Exemption Order intended the two provisions to exist as separate provisions and to govern separate matters of exemption. It is clear that the subject exemption was a general provision to govern the exemptions applicable to traders undertaking the exportation of locally manufactured goods. It is also patently clear that the packaging exemption (item 53 of the same Schedule A) was the specific and clear provision to govern the sale and purchase of locally manufactured packaging materials by traders.

[47] Thus, since the Exemption Order already has a specific provision as to packaging exemption, there was no reason whatsoever for this court to modify the subject exemption and add packaging materials within the ambit of the subject exemption. This would run contrary to the clear intention of the Parliament. Thus, the subject exemption (item 57, Schedule A) shall be the general provision while item 53, Schedule A shall be the specific provision which could also operate as the exception as to the broad and general rule under the subject exemption.

[48] The celebrated maxim of '*generalia specialibus non derogant*' is indeed relevant and certainly applicable in the present case. The specific provision under item 53, Schedule A should prevail over the general provision of the subject exemption. Suffice that we refer to the Supreme Court's landmark decision in *Director Of Customs Federal Territory v. Ler Cheng Chye (Liquidator Of Castwell Sdn Bhd (In Liquidation))* [1995] 3 CLJ 316; [1995] 2 MLJ 600:

> Discernibly, there is a conflict between s. 292(1) and s. 10(1). In this situation, the general rule of construction that applies is *specialia generalibus derogant – special provisions derogate from general provisions.* Hence, *if a special provision is in conflict with an earlier general provision, the special provision will be treated as an exception to the general provision,* and it follows that s. 292(1) of the CA must be read as an exception to the general provision of s. 10(1) of the GPA. (emphasis added)

[49] The Federal Court restated the same principle in *Lau Keen Fai v. Lim Ban Kay & Anor* [2012] 1 CLJ 569; [2012] 2 MLJ 8:

A The maxim *generalia specialibus non derogant* is applicable here which states, *inter alia*, that **where a special provision is made in a statute as** in s. 103E of the LPA **that special provision excludes the operation of a general provision in the general law** (see the case of *Director of Customs, Federal Territory v. Ler Cheng Chye (Liquidator of Castwell Sdn Bhd, in liquidation)* [1995] 2 MLJ 600). (emphasis added)

B **[50]** We find that the learned judge should have adhered to the words of the Exemption Order in its plain and ordinary meaning. We also find that the learned judge was wrong in law and in facts when he inferred on his own that the subject exemption (item 57, Schedule A) shall be read to include the packaging materials when none has been prescribed.

C **[51]** A clear distinction can be drawn between item 57, Schedule A and Item 53, Schedule A of the Exemption Order. Under item 57, goods exempted from tax are 'all locally manufactured goods for export' whereas the goods exempted from tax under item 53 are 'packing and packaging materials.' However, the respondent would still be unsuccessful to claim for tax exemption on the purchase of packaging materials under item 53, Schedule A of the Exemption Order, as it has clearly stipulated that the packaging materials must be used solely for the packing or packaging of fresh eggs, fresh vegetables, fresh fruits, aquatic plants, aquarium marine life or cut flowers.

D

E **[52]** On a similar note, the respondent would still be ineligible for the tax exemption under the manufacturer's exemption under item 4, Schedule B of the Exemption Order, as this exemption only applies to manufacturers. The respondent in this case, is not a manufacturer but a trading company which does not conduct its own manufacturing.

F **[53]** All the aforementioned deliberations in this part considered, we hereby answer issue 2 in the positive. We find that the appellants were correct in finding that the respondent's exercise of trader's repackaging does not fall either within the broad exemption under the subject exemption (item 57, Schedule A) or even the specific exemption under item 53, Schedule A, and the manufacturer's exemption (item 4, Schedule B).

G

Issue 3: Whether The Appellants' Interpretation Of The Subject Exemption Was Merely A Holistic And Proper Interpretation Of All Relevant Laws Or An Undue Imposition Of Internal Policies Beyond The Ambit Of The Subject Exemption

H **[54]** It is obvious from our positive answer in issue 2 above that the different tax treatments between a trader's packaging and a manufacturer's packaging were purely a matter of law and not mere internal policies. The different treatments were plain and obviously prescribed within the machinations of the Exemption Order itself, which was already well within the knowledge and reliance of the respondent itself.

I

[55] Even the distinct and separate tax treatment as to traders is a statutory rule under para. 26D of the Sales Tax (Amendment) Regulation 2020, which clearly prescribed that a trader can be eligible for tax exemption under the condition that the exempted goods had not undergone any value-added process.

[56] The rationale behind this provision is simply that any value-added process may result in additional profit on top of the initial and original form of exempted goods within the schedule. Thus, if a trader shall generate additional profit from any value-added process of the exempted goods for exportation, then the trader must account for the profit and not be allowed further favourable treatment by also enjoying tax exemptions (on top of the additional profit). This would cause unjust tax treatments between manufacturers and traders who both undertake the business of exportation of locally manufactured goods.

[57] Furthermore, any value-added process would be a totally separate process altogether beyond the exempted sale of goods scheduled within the Exemption Order. This value-added process (which falls outside the ambit of the Exemption Order) can neither in fact nor in law be applied to the exemptions under the Exemption Order.

[58] Thus, the Minister's reasoning and explanation as to the element of 'value-added process' was not at all an additional criteria or additional internal policy beyond the confines of the Exemption Order. The element was already a statutory feature within the law that the respondent was legally expected to be aware of.

[59] Now, the respondent and the learned judge both summated that the trader's repackaging cannot be assessed in isolation as the trader's repackaging was crucial in making the exportation of the edible oil products to be possible.

[60] On the contrary, we do not hesitate to disagree with the respondent on this point. The respondent had failed to prove that it was 'impossible' to export the edible oil products without the trader's repackaging. It must be kept in mind that the packaging materials used in the trader's repackaging were not focused solely on rendering the mere 'possibility' of exportation, but instead were focused on variety of sellable formats of edible oil products. It would be remiss for this court to not fully apprehend that the edible oil was repackaged in PET bottles, jerrycans, tins and drums. If the repackaging was done solely on the pretext of enabling exportation, then there was no reason whatsoever to have more than one format of repackaging.

[61] Apart from the variety of packaging formats, the variety of repackaged products were also conveniently labelled. Thus, the initial products contained in the manufacturer's packaging had evolved into numerous convenient packaging formats which are ready to be put on the shelves at the

export destination. Common business sense and logic would dictate that the trader's repackaging would incur additional costs. Costs of which would definitely be factored into the final value of the repackaged edible oil products. No right-thinking business would undertake trader's repackaging for free and at the expense of shaving down its own margins.

[62] Thus, it was exceedingly more often than not that the trader's repackaging was undertaken not merely to enable exportation, but instead, to add value and variety of the goods to be more sellable and marketable than the original products initially packed inside the manufacturer's packaging.

[63] Therefore, this value-added process of trader's repackaging was a totally separate and distinct process and exercise outside of mere trading of exempted goods within the Exemption Order. It was a value-added process that cannot simply be lumped together with the base business of the exportation of locally manufactured products.

[64] It also clearly gleans from the limited exceptions under item 53, Schedule A of the Exemption Order that a trader's sale and purchase of packaging materials for the purposes of packing exempted goods for exportation was only allowed for exceedingly fragile and perishable goods (fresh eggs, fresh vegetables, fresh fruits, aquatic plants, aquarium marine life or cut flowers) which clearly requires proper and secure packaging to ensure safe exportation. Thus, it makes absolute sense that repackaging of such fragile and perishable goods would purely be intended for the safe exportation of the goods (and not any value-adding to the exempted goods).

[65] All the aforementioned deliberations in this part considered, we hereby answer issue 3 by finding that the appellants' interpretation of the subject exemption was merely a holistic and proper interpretation of all relevant laws and was not any undue imposition of internal policies beyond the ambit of the subject exemption.

Our Decision And Orders

[66] For the above reasons, we unanimously allow the appellants' appeal and set aside the High Court's decision and order. We accordingly order that the appellants' stance and decision be reinstated. This court orders the respondent to pay to the appellants the sum of RM3,697,852.16 demanded by way of bill of demand dated 5 February 2020 with interests thereof.

[67] This court also orders total costs of RM20,000 each (total RM40,000) here and below to be paid by the respondent to each of the appellants.